IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Minakshi Vs. State of Rajasthan

S.B.CR. MISC. PETITION NO.740/2006

against the order dt.17.4.2006 passed by Addl. Sessions Judge No.2, Sri Ganganagar in Cr.Revision No.66/2005

DATE OF ORDER :: August 10, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.M.K.Garg, for the petitioner.
Mr.Ashok Upadhyaya, Public Prosecutor.

BY THE COURT:

Issue notice for final disposal. Mr.Ashok Upadhyaya, accepts notice on behalf of the State.

With the consent of the learned counsel for the parties, the matter is finally heard and disposed of at the admission stage.

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioner has assailed the order dt. 17.4.2006 passed by Additional Sessions Judge No.2, Sri Gangangar (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioner against the order dt. 28.9.2005

passed by Judicial Magistrate, Sri Ganganagar (for short 'the trial court' hereinafter) was dismissed on the ground that the petitioner being complainant has no locus to file an application under section 319 Cr.P.C.

I have carefully gone through the orders passed by the trial court as well as the revisional court.

The trial court dismissed the application filed by Addl. Public Prosecutor. However, on revision, the revisional court dismissed the revision petition only on the ground that the complainant has no locus. The controversy involved in the instant petition is no more res integra in view of the decision of the Hon'ble Supreme Court in K.Pandurangan vs. S.S.R.Velusamy and Anr., **2004 SCC (Cri)) 48**, wherein the Apex Court held that so far as the first question as to the maintainability of the revision at the instance of the complainant is concerned, we think the said argument has only to be noted to be rejected. Under the provisions of the Code of Criminal Procedure, 1973, the court has suo motu power of revision, if that be so, the question of the same being invoked at the instance of an outsider would not make any difference because ultimately it is the power of revision which is already vested with the High Court statutorily that is being exercised by the High Court. Therefore, whether the same is done by itself or at the instance of a third party will not affect such power of the High

Court relying on a decision of Hon'ble Supreme Court in Nadir Khan vs. State (Delhi Admn.) (1975) 2 SCC 406.

In Lok Ram vs. Nihal Singh & Anr., JT 2006(4) SC 464, the Apex Court held that power under section 319 of the Code of Criminal Procedure can be exercised by the Court suo motu or on an application by someone including accused already before it, if it is satisfied that any person other than accused has committed an offence, he is to be tried together with the accused.

In this view of the matter, the order of revisional court cannot be sustained and the matter deserves to be remanded to decide the revision petition on merit.

Consequently, the criminal misc. petition is allowed. Order impugned dt. 17.4.2006 passed by Additional Sessions Judge No.2, Sri Ganganagar is remanded to Additional Sessions Judge No.2, Sri Ganganagar to decide the revision petition filed by the petitioner afresh on merit.

[H.R.PANWAR],J.

m.asif/-